GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the Management of City Municipal Council, Mysore.

Award of the Presiding Officer, Additional Industrial Tribunal, Bangalore, published.

Read the following papers.

(1) Letter No. AIT/4/75-76, dated 4th April 1975, from Sri G. S. Bhagwat, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE PRESIDING OFFICER ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated this 3rd day of April, 1975

PRESENT :

Shri C. S. Bhagwat. B.A., LL.B.,

Presiding Officer.

A.I.D. No. 13 *of* 1974

I-Party.—

Workman of City Municipal Council, Mysore. represented by Sri K. C. Viswanathan, No. 293/3, III Block West Uttaradhi Mutt Road, Fort Mohalla, Mysore.

Vs.

II-Party.—

The Management of City Municipal Council, Mysore by its Commissioner.

Appearances

For the I-party.—Sri M. C. Narasimha Swamy, Advocate, Bangalore.

For the II-party.—Sri G. R. Govinda Singh, Mcnicipal Advocate, City Municipal Council, Mysore.

AWARD

The Government of Karnataka being of opinion that an Industrial Dispute existed between the workman and the Management of the City Municipal Council, Mysore referred the said dispute by their Order No. SWL 34 LLD 74, dated 26th June 1974 to this Tribunal under Section 10 (1) (d) of the Industrial Disputes Act, 1947 for Adjudication on the following points of dispute;

"Is the management of City Municipal Council, Mysore justified in retrenching the services of Sri K. C. Viswanathan, Measurer-*cum*-depot clerk with effect from 1st October 1970?

If not what relief the said workman is entitled to?"

2. On receipt of the said reference the same came to be numbered as A.I.D. 13/74 and notices were issued to the parties to file their statements of demand.

3. The concerned workman K. Viswanath (hereafter called as the I party) filed his claim statement on 20th August 1974. The case of the I-party is that he was appointed as a measurer-*cum*-clerk in the depot of City Municipal Council by an Order No. MFS 11/58-59, dated 7th November 1958 in writing signed by the Municipal Commissioner of the City Municipal Council, Mysore. He was a full-time employee of the City Municipal Council, Mysore and was a workman under the provisions of the Industrial Disputes Act. From the date of his appointment, he continued to work directly under the City Municipal

Council as a measurer-*cum*-depot clerk. While this being so in October, 1970, the management of City Municipal Council, Mysore through its Revenue Officer directed him to hand-over complete charge of A. K. Puram depot to a Central depot clerk immediately as the depots were ordered to be closed with effect from 1st October 1970, as per the memo No. MFS 75/69-70, dated 1st October 1970. By this memo he was not terminated from his work nor was he told to work. His representations to the management to put him back in his place of work were of no avail. The management of City Municipal Council, Mysore finally informed him that nothing more could be done in this matter by its official memo No. C. 8 PR(2) 251/71-72, dated 21st April 1974. The management of City Municipal Council did not issue him any notice of retrenchment nor paid any compensation for retrenchment.

The retrenchment being illegal and unjust, he approached the Assistant Labour Commissioner, Mysore Division for conciliation. During the process of conciliation the management of City Municipal Council admitted its fault, but failed to give any relief to him. The retrenchment is unjust, illegal and beyond the powers of the City Municipal Council. Hence he prayed for reinstatement in his former post with continuity of service and full backwages due to him.

4. The management of the City Municipal Council, Mysore by its Commissioner (hereafter called as the II-party) filed its counter on 21st September 1974. The contentions of the II-party briefly are these:

The I-party was appointed as measurer-*cum*-depot-clerk by the Food Committee, consisting of the President of the City Municipal Council as Chairman and 4 to 5 Municipal Councillors as members of the Food Committee. It is an independent body, maintained out of its own funds and it is not aided by the City Municipal Council. The appointment, payment of salary to employees, removal of

the employees from service and other issues were being decided by the Committee and not by the II Party. The Municipal Commissioner was only looking after the general supervison of these fair-price depots. The II-party is not the appointing authority. The I-party is not a workman within the definition of the Industrial Disputes Act and much less a workman under the II-party. It denied the other averments made in the claim statement and submitted that the claim of the I-party may be dismissed with costs.

5. On the above pleadings, after hearing on both sides the following additional point of dispute also set down on 5th November 1974 for adjudication:

Whether the I-party proves that he was an employee of the II-party as defined under the Industrial Disputes Act?

6. In the meanwhile an application was filed on behalf of the I-party on 21st September 1974 to grant him interim maintanance of Rs. 100 per month and directed the II-party to pay the same to the I-party pending final disposal of the main reference, supported by an affidavit. The II-party by its objection filed on 7th October 1974 opposed the application on the ground that there is no provision under the Industrial Disputes Act, 1947 for such interim relief and that the I-party is not an employee under the II-party and so on.

7. Heard Advocates on both sides. It was agreed that the main reference itself be disposed off on merits and on this understanding the petition presented on behalf of the I-party on 21st September 1974 was filed, the same not being pressed.

8. In support of their respective contentions on behalf of the I-party the concerned workman was examined as WW-1 and Exts. W-1 to W-5 were marked and M.W-1

K. Sundaraj Iyengar. M.W-2 R. S. Nagaraj were examined and M-1 to M-6 were marked on behalf of the II-party.

9. Admittedly in about the year 1957 the City Municipal Council, Mysore constituted a Food Committee under Section 63(3) in its discretionary functions under Section 91(P) of the Mysore Municipalities Act, 1964. The said Committee consisted of 4 or 5 councillors headed by the President of the City Municipal Council as its Chairman. The said Committee was running about 18 Municipal Fair-price depots since 1957. The I-party workman was appointed as a measurer-*cum*-depot clerk in Erangere Depot on a pay scale of Rs. 13 plus 17 D.A. per month, by an Order Ext. W-1 No. MFS 11/58-59, dated 7th November 1958 and this memo was signed by the Municipal Commissioner of the II-party. In the year 1959 the I-party workman was transferred from Nazrabad depot to Erakatte depot as per Ex. W-2. Again in the month of July, 1959 the concerned workman was transferred from Erakatte to Asokpuram depot with immediate effect. Both these memos were issued from the City Municipal Council, Mysore (Food Section) and signed by the Municipal Commissioner. In October, 1970, the II-party through its Revenue Officer, directed the I-party to hand-over complete charge of the concerned depot to a Central depot clerk, M.W-1 Sundaraj Iyengar. immediately as the fair-price depots referred to in the memo were ordered to be closed with effect from 1st October 1970, as per Ext. W-4. The result was that the I-party was left high and dry. He many a times demanded that he be taken back to work as his retrenchment was illegal and unjust, but all his efforts were in vein and finally the II-party informed the concerned workman that nothing more could be done in this matter by Ext. W-5 memo No. C.8 PR (2)251/71-72 dated 21st April 1972.

10. Now the case of the I-party workman is that he was a full-time employee of the II-party and was workman under the provisions of the Industrial Disputes Act and

therefore, he is entitled to protection under the Industrial Disputes Act, 1947.

11. Percontra the case of the II-party appears to be that the Food Committee is an independent body maintained out of their funds and it is not aided by the Municipal Council. The service condition of the employees of the Food Committee was being decided by the said Committee and not by the II-party. The Municipal Commissioner was only looking after the general supervision of the fair-price depots. Therefore, the I-party is not a workman within the definition of the Industrial Disputes Act and much less under the II-party and it was further contended that the conduct of the I-party is such that he is not entitled to any relief. In this connection the II-party relied on the evidence of M.W-1 K. Sundaraj Iyengar clerk in the Municipal Fair Price Depot, M.W.-2 R. S. Nagaraj, clerk in the Municipal Council and Exts. M-1 and M2, Ext. M-1 is the proceeding book and Ext. M-2 is the acquittance roll. None of these is going to help the II-party in any way to show that the Food Committee is an independent body and the service conditions of the employees employed in the Municipal Fair price Depots were being decided by the Committee and not by the II-party.

12. It is now evident from the material available on record that the II-party is responsible for maintaining the Faire-price Depots for the sale of the necessaries of life under the provisions of Section 91(P) of the Mysore Municipal Act, 1964. The II-party it appears handed over to the Food Cmmittee the task of running the Fair-price depots. We were not told by the II-party that the wages were being paid to the I-party by the Food Committee nor is there anything on record to show that the I-party was appointed by the Food Committee. On the other hand we have the evidence of M.W-1 Sundaraj Iyengar to the effect that the salaries were paid to the depot clerks and measurers out of the Rice Purchase Account of the City Municipal Council, Mysore. Rice Purchase Account is

being continued till now. The Municipal Administrator is operating the Rice Purchase Account. After the supersession of the Municipal Council the officer of the Divisional Commissioners' grade is appointed as an Administrator. The Food Committee is not a company. It is not registered, nor even a society. The Municipal President was the Chairman of the Committee. His supervising authority is the Commissioner at present. We are to bear in mind here that this M.W-1 is also working as a clerk in the Mysore Municipal Fair Price Depots since 1958. Another witness M.W-2 R.S. Nagaraja is working in the Establishment Section. He is the case worker and he is in custody of the case file of the I-party workman. According to him the Food Committee office is in the Municipal building. His supervising authority is the Municipal Commissioner. The salary and cheques were being signed by the Commissioner and now that work is delegated to the Manager. All these put together go to point out that there was a statutory obligation on the part of the II-party to provide fair-price-depots and this obligation had been discharged by the II-party by entrusting that task to the Food Committee, even though there is no positive evidence of such entrustment of work in the present case. One another thing we are to note here is that Ext. W-1 was signed by the Municipal Commissioner and it is because under Section 342 of the Mysore Municipal Act, 1964, it is the Commissioner or Chief officer, who alone is empowered to appoint a competent person to any post under the Municipal Council, the monthly salary of which does not exceed Rs. 60. At the time of the appointment of the I-party *vide* Ex. W-1 admittedly his total emoluments did not exceed Rs. 60 per month.

In these circumstances it is idle to suggest that the I-party was appointed by the Food Committee which was an independent body and that the II-party has nothing to do with his appointment. Exts. M-1 the so called proceeding book of the Food Committee and Ext. M-2 containing the wages paid to the depot clerks and measures including

the I-party workman do not at all throw any light on the subject that the I-party workman was employed by the Food Committee and his wages were being paid by that committee. None of these books bear the seal of the Food Committee and nobody examined to speak to the authentication of these books. On the contrary the concerned workman W.W-1 Viswanath states positively that he was appointed by the Commissioner of the City Municipal Council, Mysore in 1958. He was working directly under the control and supervision of the II-party and was liable to be transferred at the will of the II-party and was a workman within the definition of the Industrial Disputes Act. In this regard he finds support from Exts. W-1, W-2 and W-3. There is nothing to contradict him on these points and further we find that M.W.-1 K. Sundaraj Iyengar also supports the case of W.W-1 to some extent. We are to bear in mind here that this M.W-1 is also working as clerk in the Fair price depot since 1958. Though he states that the Food Committee is not existing now on account of the supersession of the Municipal Council in the year 1972 in his cross-examination he was made to admit that the Food Committee is not superceeded. Notwithstanding the closure of some fair price depots for running at loss he is same continued as depot clerk and his supervising authority is the Commissioner at present. In the circumstances, I am clearly of the opinion that the Food Committee was only a wing of the II-party and in the instant case the I-party has satisfactorily proved that the II-party is his real employer by reason of his appointment from 7th November 1958 and continued in force and was deemed to have been made under the Mysore Municipal Act, 1964 and that he is an employee of the II-party within the definition of the employee under the Industrial Disputes Act and so my finding on the additional issue is recorded in the affirmative.

13. Now coming to the main points of dispute, the I-party workman W.W-1 has proved that he worked as a depot clerk in the Municipal Fair price depot for a period

of 12 years commencing from the year 1957. In October, 1970 the II-party through its Revenue Officer directed him to hand over complete charge of the depot where he was working to a Central Depot clerk immediately as the depots mentioned in the memo were ordered to be closed with effect from 1st October 1970 as per Ext. W-4. It is seen that by this Ext. W-4 the I-party was not terminated from his work nor was he told to work. He made representations to the II-party management (*vide* Exts. M-3 and M-4) that he be taken back to work as he so-called retrenchment was illegal and unjust. But it appears that all his efforts were in vein and finally the II-party informed him that nothing more could be done in this matter by its endorsement Ext. M-5 and Ext. W-5 which is a true copy of the same. In the conciliation proceedings before the Assistant Labour Commissioner, Mysore Division Mysore, in the statement Ext. M-6 filed on behalf of the II-party, it was admitted that the I-party workman worked as a measurer and fair price depot clerk since 7th November 1958 to 31st July 1959 and from 1st August 1959 to 30th September 1970. The case of the II-party appeared to be that the retrenchment of the I-party workman from the fair price depot was due to poor sales in far price depot and so he became unemployed from 1st October 1970. Further it is seen that even the request of the I-party workman to appoint him to any of the class-III or class IV post made on 23rd March 1972 was turned down by the II-party, on the ground that the I-party workman is overaged and in view of the mode of recruitment prescribed in the Municipalities (Recruitment of officers and servants) Rules 1971 to the class 4 posts that they have to be appointed by direct Recruitment and no other method of recruitment is prescribed. In this way we find that the I-party workman was left high and dry.

14. In the instant case admittedly no notice or no pay in lieu of notice for one month was given to the concerned workman by the II-party. So also no compensation due to the I-party was given by the II-party at the

time of the so called retrenchment. Likewise no notice under Shops and Establishments Act was given to the I-party at the time of the so called retrenchment and thus even the provisions of the Shops and Establishments Act were not complied with. It has come in the evidence of W.W.-1 that one Ammer Ahmed junior to him appointed as a Depot clerk is still in service of the II-party. This fact was not at all disputed by the II-party. W.W.-1 is positive that Ammer Ahmed is still serving as a depot clerk in Eranagere depot. If this is a fact then the so called retrenchment was not according to Section 25 (C) of the Industrial Disputes Act, 1947, in that Ameer Ahmed who is Junior to the I-party workman in service was retained in service while the I-party who had put in 12 years of service was sent out by Ext. W-4, which is most ambiguous. It appears strange that the management should transfer the I-party workman who had put in 12 years of service to the depot which was about to be closed and thus forced the concerned workman out of work and that too when his junior Ameer Ahmed was retained. This clearly violates the provisions of Section 25 (C) of the Industrial Disputes Act. The so-called retrenchment further appears to be unjust and illegal, in view of the fact that no opportunity was given to the I-party to explain, how and why he should not be retrenched and how he was senior to other persons who were retained in service. Thus we find that the order of so-called retrenchment is against the principles of natural justice, in that it was made behind the back of the I-party who was not given an opportunity to contest it and to explain his case to the II-party. Further it is a well laid law that a person who appoints is alone the proper person to retrench or to dismiss or to terminate the services of the workmen. In the present case the so-called retrenchment order Ext. W-4 had been passed by the Revenue Officer who according to me was incompetent to pass the order of so-called retrenchment. We are now aware that the person who appointed the I-party was the Municipal Commissioner of the II-party and therefore, he alone was the proper person to retrench or to dismiss or to terminate the

service of the I-party workman. So also it is seen that Ext. W-4 which according to the II-party is the order of retrenchment, does not give valid reasons. The reason which is ostensibly stated in Ext. W-4 to my mind appears to be fictitious. The II-party did not even consider the case of the I-party workman sympathetically and had not taken him to work, although opportunities for employing him as depot clerk and vacancies of peons arose immediately after the so-called retrenchment, in that the II-party has violated Section 25 (H) of the Industrial Disputes Act. A vague attempt was made on behalf of the II-party to show that loss was incurred by Asoka Puram depot and it was due to mis-handling of the affairs of the depot by the I-party workman, to justify the action taken by the management against the I-party workman. But we are to bear in mind here that no opportunity was given to the I-party to explain how and why the loss was incurred by the Asoka Puram depot and that he was not responsible for the same. It appears that it was made behind the back of the I-party who was not even given an opportunity to contest it and to explain his case to the II Party. So viewed from any point, so-called retrenchment order passed by the II Party through its Revenue Officer which is at Ext. W-4, against the I Party workman is not justified and to my mind it is unjust, illegal and beyond the powers of the II Party and so I record my finding on main points of dispute in negative.

15. In the result, the above reference is allowed and I pass the following Award:—

The Management of the II Party is directed to re-instate the I Party workman Sri K. C. Viswanath in his former post with continuity of service and full backwages to him.

Parties to bear their own costs.

Dictated to the Stenographer, transcribed by him and corrected by me.

G. S. BHAGWAT,
Presiding Officer,
Additional Industrial Tribunal, Bangalore.

"Copy"

G. S. BHAGWAT,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

Order No. SWL 91 LLA 75,

Bangalore, dated the 18th April, 1975.

S.O. 1511.—WHEREAS by State Government Order No. SWL 34 LLD 74, dated 26th June 1974 the Industrial Dispute between the workmen and the management of City Municipal Council, Mysore, was referred to the Additional Industrial Tribunal, Bangalore, for adjudication.

AND, WHEREAS the Additional Industrial Tribunal, has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers cosferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above. in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.